

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R. UDAYABHANU

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

Crl.MC.No. 5619 of 2003()

CC.174/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IDUKKI

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PETITIONER: 1ST ACCUSED

M.I.BABY AGED 41 YEARS,
S/O. ISSAC, SUB INSPECTOR OF POLICE,
THALASSERY POLICE STATION, RESIDING AT
MANNAMPUZHA, ATHANI, KILLANNOOR VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN
SRI.SABU SREEDHARAN
SRI.A.G.GIRISH KUMAR

RESPONDENTS: COMPLAINANTS AND STATE

1. RAVI S/O. CHEMPAN,
MOONNATTIL VEEDU, PATTAYAKUDI,
PULICKATHOTTI P.O., THODUPUZHA.
2. THOMAS S/O. JOHN, KUNNUMPURATHU,
VENMANI P.O., KANJIKUZHI, THODUPUZHA
3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 5619 OF 2003

Dated this the 16th day of November 2006

ORDER

The petitioner is the accused in C.C. No. 174/2001 of Judicial First Class Magistrate, Iddukki with respect to offences under sections 323 and 342 I.P.C., on the allegation that the petitioner who was working then as Sub Inspector of Police, Kanjikuzhy Police Station man handled the respondents 1 and 2. It is the contention of the petitioner that his actions, even if it is found that the same amounted to offences under the particular sections, no cognizance can be taken without sanction under section 197 Cr.P.C. It is further alleged that allegations did not be disclose the offences as alleged. It is further contended that it is without any legal evidence that the Magistrate has taken cognizance of the matter. According to the petitioner, the complaint of the respondents and the action of the court amounted to abuse of process of the court. The petitioner has also produced the F.I.R. It is pointed out that it is after a lapse of 40 days that the complaint has been preferred. Moreover, the respondents were 1st and 3rd accused in Annexure A1 crime i.e., crime 90/1999 with respect to offence under section 7 of Kerala Gaming Act. The above persons were involved in playing cards for making illegal gains and they were arrested and Rs.

1,800/- was seized and the playing cards were recovered. The allegation that the petitioner and Shri. M.I. Joy, Head Constable of Police Station slapped on the face of the defacto complainant etc. and extracted money is false. According to him, the complaint has been filed at the instance of the Circle Inspector who was on enemical terms with the petitioner and also at the instigation of the liquor lobby that is active in the locality.

2. I find that the case of the complainant is that after taking part in the festival at the local temple he slept in his jeep. While so, the police under leadership of the petitioner herein dragged him out and removed the money that he had with him i.e., Rs. 546/-, took him to the police station beaten him up and abused him. His friends contacted the police and a sum of Rs. 6,000/- was demanded and it was intimated that in case of non compliance, they will be made accused along with the persons who are arrested for gambling. The offences alleged are under sections 323, 327, 342, 294 (b) r/w 34 IPC. The petitioner has relied on the decision reported in **Sarojini v. Prasannan** (1996 (2) KLT 859) and that of the Supreme Court in **Rizwan Ahmed Javed Shaikh and others v. Jammal Patel and others** (2001 (5) SCC 7) in support of the contention that his case

required sanction under section 197 Cr.P.C. The counsel has also relied on the decision reported in **Rakesh Kumar Mishra v. State of Bihar and others** (2006 (1) SC 557) and **Sankaran Moitra v. Sadhna Das and another** (2006 (4) SCC 584) in support of the proposition that actions even in the purported exercise of official duty is protected by section 197.

3. I find that in the instant case the complainants were not involved in any offence for which they were wanted or police action was in pursuance of the suppression of a mob agitation etc. so that prima facie it can be held that the matter is required sanction under section 197 Cr.P.C. The time of report of the crime before the court could not be found from Ext.P1. Of course, in view of the proposition laid by the Supreme Court that the purported exercise of official duty also would attract section 197 Cr.P.C, the case of the petitioner requires detailed consideration. In the circumstances, I find that it will depend on the findings of fact with respect to the alleged exercise of the official duty. In the circumstances, the court below may consider the above aspect and dispose of the case.

In view of the plea of the counsel for the petitioner the court

below is directed that no pre-trial detention is called for in the instant case on the surrender of the petitioner before the court below. The petitioner would surrender before the court below within two weeks from today and apply for trial. Bail application to be filed may be disposed of on the same day itself as far as possible.

K.R. UDAYABHANU, JUDGE.

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